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RCRA, Superfund & EPCRA Hotline Training Module

Introduction to:

RCRA State Programs

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STATE PROGRAMS

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1. INTRODUCTION

The Resource Conservation and Recovery Act (RCRA) addresses an enormous problem facing the nation — how to safely manage the huge volumes of solid and hazardous waste generated in this country. The statute lays out the framework for such a program, and Congress charged EPA to develop and oversee the implementation of regulations governing the identification and management of hazardous wastes. Congress intended for states to assume responsibility for implementing the RCRA Subtitle C program with oversight from the federal government. The rationale was that states are more familiar with the regulated community and are in a better position to administer the programs and respond to specific state and local needs. In addition, the regulation of waste management activities has traditionally been viewed as an area within states' enforcement power and responsibility. Most states have their own state environmental protection regulations. These states may apply for authorization to have their state hazardous waste program operate in place of the federal hazardous waste program.

This module outlines the requirements and procedures for a state to become authorized to manage and oversee its own RCRA program. It also describes how the state authorization system can affect the applicability of certain rules. When you have completed this module you will be familiar with the state authorization process for hazardous waste management programs. Specifically, you will be able to:

- Specify why states are authorized by EPA and list the elements of an authorized state program
- Outline the delegation process and identify components of an authorization application
- Specify the applicability of Hazardous and Solid Waste Amendments (HSWA) and non-HSWA provisions in authorized and unauthorized states
- Define and provide the citation for the "cluster rule."

Use this list of objectives to check your knowledge after you complete the training session.

2. REGULATORY SUMMARY

The regulations concerning state authorization are found in 40 CFR Part 271. These regulations outline the requirements and procedures a state must satisfy in order to receive authorization to implement the federal hazardous waste program. To receive the delegated responsibility from EPA for implementing the Subtitle C program, states must develop their own hazardous waste program which must be approved by EPA. This "authorization" process is described below.

2.1 STATE AUTHORIZATION

RCRA allows states to receive authorization to implement the federal hazardous waste program. RCRA §3006 gives EPA the authority to authorize qualified states to administer and enforce the RCRA program within the state. Following authorization, state regulations operate in lieu of the federal regulations in that state (with some limits). In order to receive authorization, a state's statute(s) and regulations must be equivalent to federal authorities, consistent with the federal program and authorized state programs, and at least as stringent as the federal program. The state program must address requirements for permitting, compliance evaluation, enforcement, public participation, and sharing of information. As part of the consistency requirement, state programs may not restrict the free movement of hazardous waste across state borders to or from treatment, storage, or disposal facilities (TSDFs) permitted to operate under RCRA or any approved state program. Although many of the state programs closely parallel the federal program, some states do adopt more stringent requirements for generators, transporters, or facilities handling hazardous waste.

While authorized states have primary enforcement responsibility under state law, EPA retains enforcement authority under RCRA §§3007, 3008, 3013, and 7003. When EPA does enforce in authorized states (called "overfiling"), it enforces the authorized state programs where appropriate.

2.2 STATE AUTHORIZATION APPLICATIONS

Any state that seeks authorization for its hazardous waste program must submit an application to EPA for review and approval. Items required to be included in a state program application are:

- Governor's or state director's letter
- State statutes and regulations
- Program description
- State attorney general's statement

- Memorandum of agreement
- Provisions for public involvement for initial program authorization.

GOVERNOR'S LETTER

States must submit a letter from the governor of the state requesting program approval (§271.5(a)(1)). The governor's letter transmits the state's application and is the formal request for program approval. The letter should contain a reference to the federal statute, a reference to the application, a request for approval of the state program, and the governor's signature.

STATE STATUTES AND REGULATIONS

After developing a state hazardous waste program, the state must submit a copy of its statutes and regulations that are designed to act in place of the federal RCRA regulations. Sometimes the state regulations incorporate some or all of the federal requirements by reference. A document is often included with the application highlighting where federal requirements are incorporated in the state code (§271.5(a)(5)).

PROGRAM DESCRIPTION

Any state that seeks approval to administer its own RCRA program must submit a description of the proposed program (§271.5(a)(2)). Pursuant to §271.6, the program description must include:

- Scope, structure, coverage, and processes of the state program
- Description of the organization or state agency that will manage the program
- Estimate of the cost of administering the program, as well as sources and amounts of funding available
- Description of the applicable state procedures, including permitting procedures and any state administrative or judicial review procedures
- Copies of the permit form(s), application form(s), and reporting form(s) to be used by the state
- Description of the state's compliance tracking and enforcement program
- Description of the state's manifest tracking system
- Estimate of the size of the regulated community in the state (i.e., number of generators, transporters, and TSDFs)

- Estimate of the annual quantities of hazardous waste generated, transported, stored, treated, or disposed of within the state, if available.

ATTORNEY GENERAL'S STATEMENT

This is a statement signed by the state attorney general certifying that the state has the legal authority to implement and enforce the regulations submitted in the application and that the submitted regulations are adequate to meet authorization standards (§271.7). In addition, states must submit for review the statutes and regulations expected to operate in place of RCRA.

MEMORANDUM OF AGREEMENT

A memorandum of agreement (MOA) serves as a kind of contract between the state and the EPA Regional Administrator. This agreement identifies each party's roles and responsibilities and how the state and Region plan to measure achievements. According to §271.8, the MOA must contain provisions for:

- Cooperative activities in areas for which the state is not authorized (e.g., joint permitting)
- Transitional activities (e.g., transfer of permit or delisting applications)
- Enforcement and oversight authorities that EPA retains after authorization (e.g., routine and emergency inspections by EPA)
- Administrative procedures (e.g., transfer of program information between EPA and the state)
- Any state commitments to carry out administrative procedures or variances and waivers to ensure state's adherence to authorization standards.

PUBLIC INVOLVEMENT

An initial authorization application must address how public participation in the state program approval process will be announced. Prior to submitting the application to EPA, a state seeking program approval must give public notice across the state by publication in major newspapers and other means. The notice must allow for a 30-day public comment period, as well as a public hearing if comments are extensive. Documentation of public involvement includes copies of comments submitted by the public and transcripts, recordings, or summaries of any public hearings held by the state on program approval. The state must also address the comments received from the public in the application (§271.5(a)(6)). This component is not required for subsequent program revision applications.

2.3 EPA APPROVAL PROCESS

In order for states to gain approval to implement all or part of the RCRA program, they must first apply to EPA for initial approval. As the federal regulations are modified, authorized states must submit subsequent applications in order to continue to implement the newest aspects of the RCRA program. The following describes the steps states must take to achieve initial and subsequent approvals.

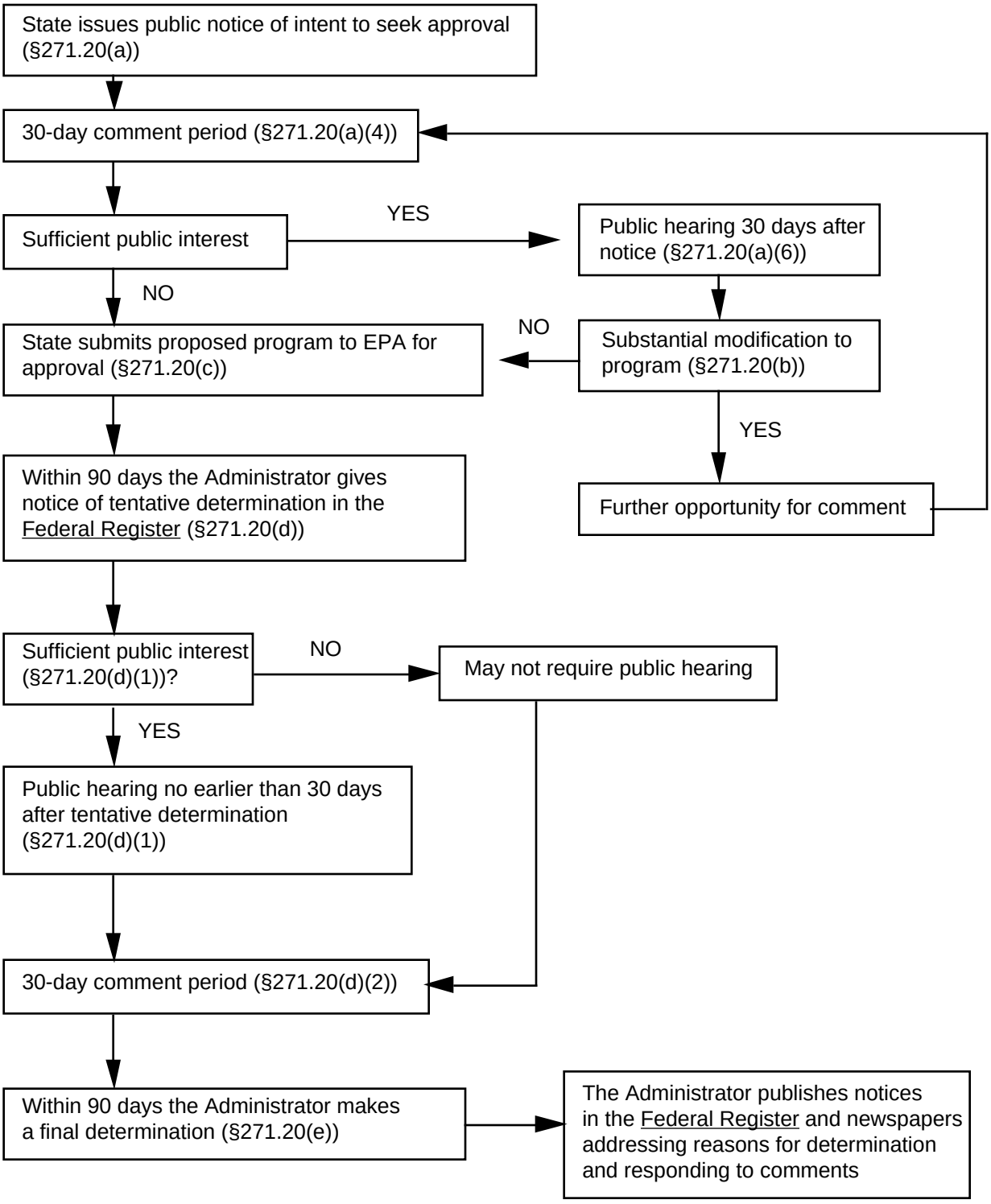
INITIAL PROGRAM APPROVAL

EPA will review the application and must be satisfied that the program is consistent with and at least as stringent as the federal program before approval. After receipt of the state program application, the EPA Administrator has 90 days to make a tentative determination in the Federal Register (then there is an additional 30-day comment period). Ninety days after the comment period, the Administrator must make a final determination and publish a notice in the Federal Register and major newspapers within the state. The notice must include the reasons for making any determination and responses to comments (§271.20). Figure 1 outlines the approval process.

SUBSEQUENT PROGRAM REVISIONS

States with final authorization must modify their programs to incorporate federal program changes by certain deadlines (see Section 2.5 of this module). The state will submit documentation similar to some of the six types of documents for initial authorization applications discussed above. The actual documentation needed will vary, depending on the scope of the state modifications and previously submitted application materials. All revision applications must include a certification from the attorney general and a copy of the state's pertinent legal authorities. EPA generally uses a streamlined process for issuing an immediate final rule for subsequent revision approvals. This means that authorization is automatically effective in 60 days unless adverse comment is received within 30 days (§271.21).

Figure 1
INITIAL PROGRAM APPLICATIONS
STATE PROGRAM APPROVAL
PROCESS



2.4 THE CLUSTER RULE

For purposes of authorization, EPA segmented the elements of the federal program into individual rules which are grouped into annual or multiyear groups called clusters. States then receive authorization piecemeal.

State authorization can be divided into two major groupings: the "base program" and "revisions." To understand these terms, it must be understood that states become authorized to implement the federal program set out in the regulations at Parts 260 through 270. The regulations actually consist of hundreds of rulemakings promulgated since May 19, 1980. The "base program" is usually defined as all RCRA regulations promulgated on or before January 26, 1983. This group of rulemakings establishes the "base" program for which a state may gain authorization.

EPA has, of course, promulgated regulations since January 26, 1983. States wishing to retain RCRA authorization must keep their program current by making "revisions" within specific time limits (Figure 2 — The Cluster System). To facilitate the application submission and review process, rules issued after January 26, 1983, were grouped into "clusters" based on the window of time in which they were promulgated. Each cluster has a name as well as due dates by which authorized states must submit applications to revise their program to include that group of rules (§271.21(e)). See Appendix G of the State Authorization Manual for a complete list of all clusters.

Normally, a state's environmental agency only has to amend its state regulations. In Figure 2, notice the double asterisk following "State Revision Application Deadline." States in this situation are given one year from the closing date of the cluster in which the rule was placed to apply for revisions. Sometimes, however, the implementing agency lacks the statutory authority from the state legislature to write certain regulations. If a state statutory change is required before regulations can be issued, a second year is allowed (§271.21(e)(2)(v)).

The purpose of the cluster system is to facilitate the revision process for a state to maintain a current program and its authorization. A state is not required to request authorization for an entire cluster. EPA allows states to request authorization for parts of a cluster, provided the state eventually adopts all of the required provisions.

Figure 2
THE CLUSTER SYSTEM

	Cluster Number*	Cluster Period	State Modification Deadline**	State Revision Application Deadline	Program Areas Affected
Non-HSWA Clusters	I	July 1, 1984, to June 30, 1985	July 1, 1986	September 1, 1986	Non-HSWA Rules HSWA §3006(f)
	II	July 1, 1985, to June 30, 1986	July 1, 1987	September 1, 1987	Non-HSWA Rules
	III . . . VI	July 1, 1986, to June 30, 1987, etc.	July 1, 1988, etc.	September 1, 1988	Non-HSWA Rules
HSWA Clusters	I	November 8, 1984, to June 30, 1987	July 1, 1989	September 1, 1989	HSWA Provisions
	II	July 1, 1987, to June 30, 1990	July 1, 1991	September 1, 1991	HSWA Provisions
RCRA Clusters	I	July 1, 1990, to June 30, 1991	July 1, 1992	September 1, 1992	All HSWA and Non-HSWA Provisions
	II	July 1, 1991, to June 30, 1992	July 1, 1993	September 1, 1993	All HSWA and Non-HSWA Provisions
	III	July 1, 1992, to June 30, 1993	July 1, 1994	September 1, 1994	All HSWA and Non-HSWA Provisions
	IV	July 1, 1993, to June 30, 1994	July 1, 1995	September 1, 1995	All HSWA and Non-HSWA Provisions
	V	July 1, 1994, to June 30, 1995	July 1, 1995	September 1, 1996	All HSWA and Non-HSWA Provisions
	VI	July 1, 1995, to June 30, 1996	July 1, 1996	September 1, 1997	All HSWA and Non-HSWA Provisions

* Checklists 1-8 were issued prior to establishment of the cluster system. State modification deadlines for these rules are 1 year from the promulgation date of each rule, or 2 years if a statutory change is required.

** One additional year provided if statutory change is needed. Can be extended by up to 18 months (see §§271.21(e) and (g)).

2.5 EFFECT OF RCRA/HSWA AUTHORITY

Prior to the enactment of HSWA, a state with final authorization administered its hazardous waste program entirely in lieu of the federal program. This meant the federal requirements no longer applied in an "authorized" state. When a new, more stringent, federal requirement was enacted, the state was obligated to enact equivalent authorities within specified time frames, but the new federal requirements were not effective in the authorized state until the state adopted the new requirements as state law and received authorization for them. Some federal rules are still issued based on the original pre-HSWA authority and become effective in authorized states only when the state adopts the provisions as state law. These rules are known as "non-HSWA" rulemakings.

In contrast, HSWA amended RCRA by adding §3006(g). Under this section, new requirements and prohibitions imposed by HSWA take effect in authorized states at the same time that they take effect in unauthorized states. These regulations are known as "HSWA" provisions. EPA was directed to implement those requirements in authorized states until the state is granted authorization to implement the new regulation(s). While states must still adopt HSWA provisions as state law to maintain authorization, HSWA requirements are implemented by EPA in authorized states until they do so.

The underlying statutory authority is explained with each new rule in the Federal Register on the first page under "Summary" and at the end of the preamble in a special section titled "Applicability of Rules in Authorized States." Until authorized states obtain approval for HSWA-based requirements, there will be joint state/EPA permitting of facilities in the authorized state. The MOA must discuss joint permitting responsibilities and procedures.

One example of the applicability of HSWA provisions and non-HSWA provisions in authorized and nonauthorized states is illustrated by the rulemaking that promulgated the wood preserving listings (F032, F034, and F035). These wood preserving wastes were promulgated pursuant to both HSWA and non-HSWA authorities. The F032 listing is a HSWA provision, and is applicable in all states, both authorized and nonauthorized. The F034 and F035 listings are non-HSWA provisions. The F034 and F035 listings are effective only in states that are not authorized for the RCRA program and in states that have incorporated the listings into their state programs and have received EPA approval for their revised state programs. The F034 and F035 listings are not applicable in authorized states that have not yet modified their state programs to include the listings.

2.6 COMPLIANCE SCHEDULES AND WITHDRAWALS

Neither RCRA nor HSWA requires that states apply for initial authorization. Once a state has been granted authorization, however, it must regularly modify its program to incorporate new federal requirements in order to maintain full authorization (§271.21(e)(1)). An authorized state must modify its program and submit authorization applications according to the schedule in the cluster rule, described above. If a state falls behind the schedule set out by the cluster rule, the Region may grant the state an extension or put it on a compliance schedule (§271.21(g)). The exception to this requirement is for changes in the federal program that are deemed less stringent than previous requirements. These less stringent requirements are viewed as optional for states to add to their authorized programs.

The Administrator may withdraw program approval of any authorized state when the state no longer complies with the requirements of Part 271. Withdrawal of program approval may occur for the following reasons: the state's legal authority no longer meets the requirements of Part 271, the operation of the state program does not comply with the Part 271 requirements, the state's enforcement program fails to comply with Part 271, or the state program fails to comply with the terms of the MOA (§271.22). The program withdrawal authority is discretionary, however, and EPA encourages Regions to approve states' authorization applications, even when there are elements of a "cluster" that are incomplete or overdue.

If an authorized state determines that it can no longer comply with the requirements of Part 271, the state may voluntarily transfer program responsibilities to EPA. In doing so, the state must give the Administrator 180 days notice of the proposed transfer of all relevant program information. At least 30 days before the approved transfer occurs, the Administrator must publish notices of the transfer in the Federal Register and major newspapers within the state.

A transfer of program responsibilities may also occur after the Administrator orders withdrawal proceedings to begin. Commencement of the proceedings may be under the Administrator's own initiative or in response to a petition from an interested person alleging failure of the state to comply with the requirements of Part 271. A more detailed description of the procedures for withdrawing approval of a state program is codified in §271.23.

2.7 INTERIM AUTHORIZATION

To provide for smoother transitions from federal to state implementation, Congress allowed interim authorization under §3006(c) for both RCRA and HSWA statutory provisions. Interim authorization was established to allow states to continue operating their own hazardous waste programs while striving to achieve the requirements for final authorization. Interim authorization provides states with a

transition period to adopt all the changes necessary to implement programs equivalent to the federal requirements. A state with interim authorization can temporarily implement the state hazardous waste program in lieu of the federal program. A state does not have to obtain interim authorization prior to receiving final authorization. Although RCRA program interim authorization expired on January 31, 1986, interim authorization still exists for HSWA provisions. Interim authorization for the HSWA provisions expires January 1, 2003 (§271.24(c)). Any state with HSWA interim authorization must obtain final authorization by this date or the HSWA program will revert to EPA.

3. SPECIAL ISSUES

In order to maintain the authority to administer the federal hazardous waste program, authorized states are generally required to revise their state hazardous waste programs as new federal regulations are promulgated. Sometimes, however, federal rulemakings are less stringent than the existing federal standards, in which case authorized states are not required to incorporate the less stringent standards into their state hazardous waste programs and will still remain authorized for the RCRA program. The following example will help illustrate this issue.

The Part 273 universal waste standards promulgated in the May 11, 1995, Federal Register are an example of provisions which are less stringent than the existing federal regulations (60 FR 25492). Since the universal waste rulemaking is a non-HSWA provision, the rule is effective only in the states not authorized for the RCRA program. This rule will be effective in authorized states when those states adopt the rule and receive EPA approval for their revised state programs. EPA does not consider the universal waste regulations to be more stringent than the existing federal requirements. Authorized states, therefore, are not required to modify their programs to adopt requirements equivalent to the federal universal waste regulations. Thus, the universal waste program will not be effective in an authorized state that chooses not to adopt this program, but those states will retain their authorization.

4. REGULATORY DEVELOPMENTS

EPA is in the process of shifting the focus of environmental regulation from the federal government to the states. Consistent with this objective, the Agency is considering streamlining the state authorization revision process to make it easier and less expensive for states to revise their approved programs when new regulatory developments are promulgated. Similarly, EPA is also implementing procedures to grant Indian tribes the same authorization rights and responsibilities that have already been afforded to states. Both of these initiatives are described below.

4.1 STREAMLINED REVISION PROCESS

Under the current authorization scheme, all revisions to authorized state hazardous waste programs, even minor changes, are reviewed under the same procedures. The standard process may result in unnecessary costs and delays in authorizing states for revisions to the federal hazardous waste program. EPA addressed the authorization procedures in the proposed LDR Phase IV Rule (60 FR 43654; August 22, 1995) and in the proposed Hazardous Waste Identification Rule for contaminated media (HWIR-media) (61 FR 18780; April 29, 1996). The proposed streamlined procedures create a two-tiered approach that places new federal rulemakings into two categories: Category 1 and Category 2. The authorization procedures for new rules that have a minimum impact and do not significantly change the scope of the state program are designated as Category 1; they consist of an abbreviated application and review process. For example, routine changes to the LDR program, such as the application of treatment standards to newly identified wastes, would fall under the Category 1 revision procedures. Rules that significantly change the nature of the state program would follow the more intensive Category 2 authorization procedures. An example of a Category 2 revision would be the proposed HWIR-media regulations that would provide more flexible management standards for contaminated media that are currently regulated as hazardous waste. Through the use of two sets of procedures, EPA hopes to improve the present authorization process by tailoring the level of effort for preparation, review, and approval of revision applications to the significance of the program revision.

4.2 AUTHORIZATION FOR INDIAN TRIBES

EPA has also proposed regulations that would allow Indian tribes the opportunity to apply for and receive hazardous waste program authorization similar to that currently available to states. On the other hand, while states must obtain full program approval when seeking authorization, under the proposed regulations, Indian tribes may be authorized to operate partial hazardous waste programs. For

example, a tribe would be able to obtain authorization to run a program that regulates only hazardous waste generators and transporters, while EPA retained responsibility for regulating and enforcing hazardous waste treatment, storage, and disposal facilities. Because they have smaller populations, a limited number of industrial and commercial operations, limited involvement with hazardous waste operations, and limited resources and capability to operate a full hazardous waste program, only Indian tribes would be eligible for partial program authorization. The proposed rule establishes criteria under Part 271 that a tribe must meet in order to obtain authorization. This rulemaking, proposed in the June 14, 1996, Federal Register is expected to go final in June 1997 (61 FR 30472).